

## **REMARKS**

Claims 3, 5-7, 9-15, 18, 20-22, 24-30, 33, 35-37 and 39-47 are pending in the present application. Claims 3, 5, 10, 14, 15, 18, 20, 25, 29, 30, 33, 35, 40 and 44-47 have been amended, and Claims 4, 7, 8, 19, 22, 23, 34, 37 and 38 have been cancelled, herewith. Reconsideration of the pending claims is respectfully requested.

### **I. 35 U.S.C. § 102, Anticipation**

The Examiner rejected Claims 3-6, 8, 9, 11-15, 18-21, 23, 24, 26-30, 33-36, 38, 39 and 41-47 under 35 U.S.C. § 102 as being anticipated by Nehab et al.. This rejection is respectfully traversed.

With respect to Claim 3, Applicants have amended such claim to include features included in dependent Claims 4 and 8 (which are thus being cancelled herewith without prejudice or disclaimer). Per amended Claim 3, two types of determinations are made in the content providing methodology. First, a determination is made as to an accessibility level of the content based on accessibility criteria. Then, a determination is made as to whether the determined accessibility level of the content meets an accessibility requirement for the user. Thus, there is both an accessibility level of the content, and an accessibility requirement for a user. The accessibility level of the content is determined, and this determined accessibility level is then used to determine if the content meets an accessibility requirement for a user. Then, one of two things is provided to the client based these two determinations – either the content is provided to the client or an indication is provided to the client. The content is provided to the client if the determined accessibility level of the content meets the accessibility requirement for the user. An indication is provided to the client (indicating that the content does not meet accessibility requirements) if the determined accessibility level of the content does not meet the accessibility requirement for the user. The cited reference does not teach the two-phased determination (determining an accessibility level of the content, and then determining whether this determined accessibility level meets an accessibility requirement for a user) followed by a client being provided one of two things based upon this two-phased determination – either the content if the accessibility requirement is met or the indication

if the accessibility requirement is not met. The reference does not teach this conglomeration of operational steps that synergistically co-act together. For example, the cited reference does not teach any type of failure indication such as the claimed step of providing an indication to the client that the content does not meet accessibility requirements if the determined accessibility level of the content does not meet the accessibility requirement for the user. Rather, the cited reference merely teaches that content is provided based upon a personalized data retrieval mechanism. Such selective retrieval of content does not provide any type of *indication of failure* of content to meet accessibility criteria. As a further example, the cited reference does not teach any type of accessibility level being determined, and then using this determined accessibility level of the content in a subsequent determination step that determines whether this determined accessibility level meets an accessibility requirement for the user. While the cited reference mentions content analysis, this content analysis is with respect to using specified keyword criteria in such analysis (col. 8, lines 51-52), where articles may be ranked based on the occurrence of such keywords. Such ranking is not based on an accessibility level of the content, as claimed, but rather is based on the particular words in the content. Quite simply, this particular aspect of Claim 3 (accessibility level determination) is directed to ranking content based upon *how* the content will be presented, whereas the reference teaches a ranking based on *what* the actual content is. Thus, it is urged that amended Claim 3 is not anticipated by the cited reference for the many reasons articulated above.

Applicants traverse the rejection of Claims 5, 6, 9 and 11-13 for similar reasons to those given above with respect to Claim 3 (of which Claims 5, 6, 9 and 11-13 depend upon).

With respect to Claim 14, it is respectfully urged that the cited reference does not teach the claimed feature of “modifying the content such that the content meets the accessibility requirement for the user, wherein modifying the content includes *changing values for tags in the content* based on one of a rule set and an algorithm such that the content meets the accessibility requirement for the user” (emphasis added by Applicants). In rejecting Claim 14, the Examiner states that Nehab teaches this claimed feature at col. 4, lines 13-25 and col. 2, lines 58-64 in that Nehab teaches flattening the extracted data

tree and formatting the linear document. Applicants urge that while this cited passage may teach formatting a hypermedia document, the features of Claim 14 go beyond such document formatting, and include a specific step of *changing values of tags in the content itself* such that the content meets the user accessibility requirements. Applicants have amended Claim 14 to further emphasize and clarify this distinction, as this changing of values for tags in the content to meet the user accessibility requirements is conditioned upon a determination that the content does not meet such requirements. Per the Examiner's interpretation of the Nehab teachings, the content is not provided at all if it does not meet the personalized data retrieval criteria, or in other words it is merely excluded (col. 12, lines 5-21). There is no teaching whatsoever as to *modifying non-conforming content* such that it is conforming, based upon a determination of such non-conformance. Thus, it is urged that Claim 14 is not anticipated by the cited reference, as every element of the claimed invention is not identically shown in a single reference. For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

With respect to Claim 15, Applicants urge that the cited reference does not teach the claimed feature of "modifying the content such that the content meets the accessibility requirement for the user, wherein performing the evaluation of the content for accessibility by the user includes *logging elements of the content that do not meet accessibility criteria*, and wherein modifying the content includes *modifying logged elements and then re-evaluating the content* to confirm the accessibility requirement for the user has been met by such content modification" (emphasis added by Applicants). As can be seen, this feature of Claim 15 is directed to *logging* of non-complying elements, *modifying* such logged elements, and then *re-evaluation* the content to confirm that the accessibility requirements have been met by such modification. In rejecting this aspect of Claim 15, the Examiner states that Nehab teaches this claimed feature at col. 4, lines 13-25, col. 2, lines 58-64 and col. 4, lines 35-39 in that Nehab discloses a formatted document processed again. Applicants urge error in such assertion, as none of these cited passages teach two evaluations being performed with respect to user accessibility requirements, and thus there is no teaching of *re-evaluating the content to confirm the*

*accessibility requirement for the user has been met by such content modification*. While the passage cited at col. 2 alludes to two steps being performed as a part of a single format operation – retrieving data from a hypermedia document into an extracted data tree (with the data retrieved being based on a structure of the hypermedia document, and not being based on any type of user criteria, as claimed), and flattening the data tree into a linear document for formatting such document – there is no user accessibility criteria (such as the claimed accessibility requirement for a user) used in any part of this process. Thus, this passage does not teach any type of content re-evaluation to confirm the accessibility requirement for the user has been met by any type of content modification. The passage cited at col. 4, lines 35-39 merely describes document formatting user pre-defined formatting settings, and is similarly deficient in any type of dual-evaluation processing with respect to accessibility requirements of a user – one being done before content modification and the other being done after content modification. Thus, it is urged that Claim 15 is not anticipated by the cited reference as every element of the claimed invention is not identically shown in a single reference.

With respect to Claim 18 (and dependent Claims 20, 21, 24 and 26-28) and Claim 33 (and dependent Claims 35, 36, 39 and 41-43), Applicants traverse for similar reasons to those given above with respect to Claim 1.

With respect to Claims 29 and 44, Applicants traverse for similar reasons to those given above with respect to Claim 14.

With respect to Claims 30 and 45, Applicants traverse for similar reasons to those given above with respect to Claim 15.

With respect to Claim 46 (and dependent Claim 47), Applicants urge that the cited reference does not teach any type of proxy server, and thus does not teach a proxy server having the specific elements recited in Claim 46. Applicants further traverse the rejection of Claim 46 for similar reasons to those given above with respect to Claims 3 and 14.

Therefore, the rejection of Claims 3-6, 8, 9, 11-15, 18-21, 23, 24, 26-30, 33-36, 38, 39 and 41-47 under 35 U.S.C. § 102 has been overcome.

## **II. 35 U.S.C. § 103, Obviousness**

A. The Examiner rejected Claims 7, 22 and 37 under 35 U.S.C. § 103 as being unpatentable over Nehab and further in view of Rowen et al., “Evaluation Web Resources for Disability Access”. This rejection is respectfully traversed, as (1) the cited art is non-analogous, (2) there is no suggestion in the references for the combination, and (3) the Examiner is using improper hindsight analysis by using Applicants’ claims as a blueprint to selectively combine teachings from non-analogous art in an attempt to establish obviousness, as will now be shown in detail.

As to item (1), if a cited reference is not analogous art, it has no bearing on the obviousness of the patent claim. *Jurgens v. McKasy*, 927 F.2d 1552, 18 USPQ2d 1031 (Fed. Cir. 1991). Applicants urge that the cited Rowan reference is non-analogous art with respect to the cited Nehab reference. Rowan is directed to evaluating web sites for accessibility by persons with special needs, whereas Nehab is directed to providing a customized document such as newspaper to a reader. Thus, a person of ordinary skill in the art would not have been motivated to combine such disparate teachings.

As to item (2), “[w]hen determining the patentability of a claimed invention which combines two known elements, ‘the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.’” *See In re Beattie*, 974 F.2d 1309, 1311-12, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992) (quoting *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984)). Quite simply, there is no suggestion of any desire to combine the teachings of these cited references, due at least in part to the disparate teachings of such references.

As to item (3), as stated by the Federal Circuit, “virtually all [inventions] are combinations of old elements.” *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983); *see also Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983) (“Most, if not all, inventions are combinations and mostly of old elements.”). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the

claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996). To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 149 F.3d 1350, 47 USPQ 2d 1453 (Fed. Cir. 1998). [w]hen determining the patentability of a claimed invention which combines two known elements, 'the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.'" *See In re Beattie*, 974 F.2d 1309, 1311-12, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992) (quoting *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984)). In rejecting these claims, the Examiner states "It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nehab in view of Rowan to use Bobby. One would have been motivated to do so *because it is a known and efficient evaluation tool*" (emphasis added by Applicants). Applicants urge that the mere fact that an efficient tool *is known* is an insufficient basis for combining references, as described above with extensive case law. The Examiner's reasoning in making the combination fails to meet the legal requirements as specified in *In re Rouffet*, supra.

Additionally regarding item (3), it is error to reconstruct the patentee's claimed invention from the prior art by using the patentee's claims as a "blueprint". When prior art references require selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight obtained from the invention itself. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985). These claims are therefore shown to have been erroneously rejected using improper hindsight analysis, as the only reason for such combination must be coming from Applicants' own specification and claims.

Therefore, the rejection of Claims 7, 22 and 37 under 35 U.S.C. § 103 has been overcome by the three reasons given above.

**B.** The Examiner rejected Claims 10, 25 and 40 under 35 U.S.C. § 103 as being unpatentable over Nehab and further in view of Kay, U.S. Patent No. 6,272,492. This rejection is respectfully traversed.

Applicants have amended Claims 10, 25 and 40 to emphasize and distinguish a fundamental difference between the teachings of the cited references and the claimed invention recited in Claims 10, 25 and 40. Specifically, the teachings of the cited references are directed to distilling or summarizing content, where a given content is selective reduced to a sub-set of the given content based on user specified criteria as to what is desired to be delivered to the user. In contrast, the invention of Claim 10 (and similarly for Claims 25 and 40) is not directed to distilling or reducing given content to be a subset of such content, but rather is directed to selectively passing or rejecting the identified content as a whole, based upon whether the user is able to access such content by determining how the content will be presented to the user. Applicants urge that the amendment to these claims overcomes this obviousness rejection.

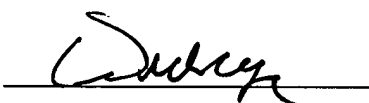
Therefore, the rejection of Claims 10, 25 and 40 under 35 U.S.C. § 103 has been overcome.

### III. Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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